



Office of the City Attorney

ACTION CALENDAR
September 9, 2025

To: Honorable Members of the City Council

From: Farimah Brown, City Attorney (Author)

Subject: Proposed Sanctuary City Ordinance – Council Referral; Adding Berkeley Municipal Code Chapter 13.114

RECOMMENDATION

Adopt a Sanctuary City Ordinance (BMC 13.114) to codify the City's sanctuary policy into the Berkeley Municipal Code.

BACKGROUND

Over the last ten years, the City of Berkeley has repeatedly reaffirmed its longstanding sanctuary policy and status as a City of Refuge for immigrants within the City. The City's policy generally prohibits the City from assisting or cooperating with federal immigration enforcement in various respects. (See Resolution No. 67,325-N.S. (2015), Resolution No. 67,598-N.S. & No. 67,763-N.S. (2016), Resolution No. 68,131-N.S. (2017), and Resolution No. 71,658-N.S. (2025).)

In January 2025, the Mayor convened a Sanctuary City Task Force that recommended codifying these sanctuary policies in an ordinance, in order to ensure the continuation of the City's sanctuary status. On April 15, 2025, based on the Task Force's recommendation, the City Council referred to the City Attorney a proposal to return to Council with "an analysis and recommendation regarding the codification" of the policy.

Accordingly, the City Attorney's Office reviewed the City's existing sanctuary resolutions, ordinances from comparable jurisdictions, and legal developments relating to the City's sanctuary policy in order to develop a draft ordinance for review and potential adoption by City Council. The City Attorney's Office also consulted with the Mayor, City Manager, and members of the Task Force for direction on desired policy outcomes.

After conducting this review and consultation, the City Attorney's Office drafted a proposed Sanctuary City Ordinance (BMC 13.114) for Council's consideration, which is attached to this report as **Attachment 1**. The proposed ordinance would codify the City's current policy into the Berkeley Municipal Code, and would also expand upon the City's current policy in several ways, including by (1) prohibiting City personnel from disclosing "protected personal information," as defined, to federal immigration enforcement; and (2) creating a new procedure for public reporting of certain requests for information or assistance made to or from federal immigration enforcement.

RATIONALE FOR RECOMMENDATION

The City Attorney's Office makes this recommendation at the request of the City Council per its referral on April 15, 2025.

FINANCIAL IMPLICATIONS

The proposed ordinance, if adopted, could require the use of City resources in the form of staff time by requiring staff to publicly report certain requests for information or assistance made to or from federal immigration enforcement officials. Such staff time is not anticipated to be extensive given that such contacts are not expected to be frequent.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects from taking this action.

CONTACT PERSON

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Attachments:

1. Ordinance No. -N.S.: ADOPTING BERKELEY MUNICIPAL CODE CHAPTER 13.114 TO CODIFY THE CITY'S LONGSTANDING SANCTUARY POLICY

ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE CHAPTER 13.114 TO CODIFY THE CITY'S
LONGSTANDING SANCTUARY POLICY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1: That the Berkeley Municipal Code shall be amended to add Section 13.114 to
read as follows:

Chapter 13.114

SANCTUARY CITY ORDINANCE

Sections:

13.114.010 - Findings and Declarations

13.114.020 - Definitions

13.114.030 - Prohibition on Use of City Resources

13.114.040 - Reporting and Transparency

13.114.050 - Exceptions to Prohibitions; Ordinance Not to Conflict with Federal Law.

13.114.060 - Enforcement; No Private Right of Action

13.114.070 - Severability

13.114.080 - Superseding of Prior Resolutions

13.114.090 - Effective Date

13.114.010 City Council Findings and Declarations

- A. The City of Berkeley is home to people of diverse racial, ethnic, and national backgrounds, including a large immigrant population.
- B. Immigrants are valuable and essential members of the City of Berkeley community.
- C. A relationship of trust between the City of Berkeley's immigrant community and the City of Berkeley, its departments, programs, and personnel is central to the public safety of Berkeley residents.

- D. This trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members may fear approaching police when they are victims of or witnesses to crimes, or may fear seeking basic health services or attending school, to the detriment of public safety and the well-being of all Berkeley residents.
- E. Entangling state and local agencies with federal immigration enforcement programs diverts already limited resources and blurs the lines of accountability between local, state, and federal governments.
- F. Multiple studies have proven that jurisdictions that do not assist in immigration enforcement are safer and economically more prosperous compared to other jurisdictions – including a 2017 report by the Center for American Progress that shows on average there are 35.5 fewer crimes committed per 10,000 people in sanctuary jurisdictions, the average annual income is \$4,353 higher, the poverty rate is 2.3% lower, and unemployment is 1.1% lower.
- G. The City of Berkeley was the first City in the Nation to declare itself a City of Refuge in 1971 for Vietnam War conscientious objectors (Resolution 44,784-N.S.). In 1986, the City became a City of Refuge for immigrants who sought sanctuary in Berkeley religious institutions (Resolution No. 52,596-N.S.). The City reaffirmed its City of Refuge status in 2007 (Resolution No. 63,711-N.S.), 2015 (Resolution No. 67,325-N.S.), 2016 (Resolution No. 67,598-N.S. & No. 67,763-N.S.), 2017 (Resolution No. 68,131-N.S.), and most recently, 2025 (Resolution No. 71,658-N.S.). Berkeley was also the first City to support the “New Border Vision,” in 2020, to encourage Congress to expand public safety, protect human rights, and welcome people to our communities.
- H. The City now wishes to enact an ordinance consistent with Resolution No. 71,658 and its longstanding sanctuary policy and status as a City of Refuge.

13.114.020 Definitions.

For purposes of this Chapter, the following words and phrases are defined as follows:

- A. “Citizenship or Immigration Status” means all information regarding citizenship of the United States or any other country, the authority to reside in or otherwise be present in

the United States, including visa status, and/or the time or manner of a person's entry into the United States.

- B. "City" means the City of Berkeley.
- C. "City Agency" means every City department, agency, division, commission, council, committee, board, other body, or person established by authority of voter initiative, ordinance, Charter, executive order, or City Council order.
- D. "City Personnel" means all persons employed by, appointed by, or serving any City Agency, including through a contract for services.
- E. "City Resources" means City funds, facilities, property, equipment, or personnel.
- F. "Immigration Authority" means any person or agency engaging in "Immigration Enforcement," including but not limited to the U.S. Department of Homeland Security or its component agencies, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, or U.S. Citizenship and Immigration Services.
- G. "Immigration Enforcement" means (1) any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law against natural persons, including but not limited to efforts to require the registration of individuals based on their Citizenship or Immigration Status; or (2) any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a natural person's presence in, entry to, reentry to, or employment in, the United States or failure to register based on their Citizenship or Immigration Status.
- H. "Protected Personal Information" means any information that identifies, relates to, describes, or is capable of being associated with a particular individual, including but not limited to a person's name, birthdate, Social Security Number or Individual Taxpayer Identification Number, telephone number, home or work address, driver's license number, place of birth, or biometric information.

13.114.030 Prohibition on Use of City Resources.

The following restrictions on the use of City Resources shall apply relating to Immigration Enforcement:

- A. No City Agency or Personnel shall use any City Resources to assist any Immigration Authority with Immigration Enforcement.

- B. No City Agency or Personnel shall deny access to any City services or benefits to residents based on Citizenship or Immigration Status.
- C. The prohibitions set forth in 13.114.030 (A) and (B) shall include but not be limited to:
 - 1. Assisting or cooperating with any Immigration Authority's investigation, detention, or arrest relating to Immigration Enforcement, including but not limited to any such actions in schools, after-school programs, hospitals, health centers, places of worship, non-profits, or city vendors, whether such actions are public or clandestine;
 - 2. Identifying, investigating, interrogating, arresting, transferring, detaining, or continuing to detain a person for a purpose relating to Immigration Enforcement;
 - 3. Inquiring into, requesting, or collecting information about the Citizenship or Immigration Status, country of origin, nationality, or place of birth of any individual, unless that information is required (i) to provide a City service or (ii) for City employment verification;
 - 4. Disseminating or disclosing Protected Personal Information to Immigration Authorities in connection with Immigration Enforcement without a valid judicial warrant or subpoena issued by a court of competent jurisdiction;
 - 5. Complying with any civil immigration warrant or request to detain, transfer, or notify any federal authority about the release of any individual;
 - 6. Making individuals in City custody available to Immigration Authorities for interviews;
 - 7. Performing any functions of an immigration officer pursuant to Section 1357(g) of Title 8 of the United States Code;
 - 8. Consenting to an Immigration Authority's search of non-public areas of City property or non-public records, absent a valid judicial warrant or judicial subpoena issued by a court of competent jurisdiction.
 - a. City Agency or Personnel shall immediately notify their supervisor of any request by an Immigration Authority to access any non-public City property or records.
- D. No City Agency or Personnel shall refer a person asking questions about their own Citizenship or Immigration Status to an Immigration Authority or any other government agency. Instead, the City Agency or Personnel shall refer such individuals to local non-

profit immigration law organizations. A list of such organizations shall be compiled and disseminated at City buildings and on the City's website.

13.114.040 Reporting and Transparency.

- A. City Agencies shall document in writing all requests for information or assistance (1) made by a City Agency or Personnel to an Immigration Authority; or (2) received by a City Agency or Personnel from an Immigration Authority, if the City Agency or Personnel responded to the request. The requests that must be documented under this section include, but are not limited to, requests for immigration detainers, transfers, interviews, interrogations, notifications, Protected Personal Information, or the Citizenship or Immigration Status of any individual.
- B. The documentation shall include but not be limited to the date, job title of requester or person to whom request was made, agency of requester or to which request was made, nature of the information disclosed or sought, a copy of a warrant, if any, and the response to the request, if any.
- C. City Agencies shall maintain these records for two years and make them available to the City Manager or City Attorney upon request.
- D. All City Agencies shall report in writing to the City Council any request described in subsection A within ten (10) business days of the request, with instruction to report such request as an Information Item on the next available agenda for a regular meeting of the City Council.
- E. The Information Item described in subsection D shall include all the information listed in subsection B; however, it shall be redacted as necessary to avoid compromising an active investigation or invading the privacy of any individual, consistent with the California Public Records Act.

13.114.050 Exceptions to Prohibitions; Ordinance Not to Conflict with Federal Law.

The prohibitions in Section 13.114.030 of this Ordinance shall not apply where the individual to whom such information pertains provides his or her consent (or if such individual is a minor, the consent of that person's parent or guardian), where the information or disclosure is necessary to provide a City service, or where otherwise required by state or federal law, including but not limited to Section 1373 of Title 8 of the U.S. Code.

13.114.060 Enforcement; No Private Right of Action.

- A. This Chapter does not create or form the basis of liability on the part of the City or City Agencies or City Personnel. It is not intended to create any new rights for breach of which the City is liable for money or any other damages to any person who claims that such breach proximately caused injury.
- B. This Chapter shall be implemented and overseen through existing administrative policies and procedures applicable to City operations and services.
- C. The City Manager may establish rules and regulations governing the implementation of this Chapter, including but not limited to rules governing the reporting of violations of Section 13.114.030.

13.114.070 Severability.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

13.114.080 Superseding of Prior Resolutions.

This Chapter shall supersede Resolution Nos. 44,784-N.S., 52,596-N.S., 63,711-N.S., 67,325-N.S., 67,598-N.S., 67,763-N.S., 68,131-N.S., and 71,658-N.S., to the extent there is a conflict between the provisions of these Resolutions and the provisions of this Chapter.

13.114.090 Effective Date.

This ordinance shall become effective thirty (30) days after its adoption.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation